



Submission to MHCLG Considering the case for a Housing Court

About the DCN

The District Councils' Network (DCN) is a cross-party member led network of 200 district councils. We are a Special Interest Group of the Local Government Association (LGA), and provide a single voice for district councils within the Local Government Association.

District councils in England deliver 86 out of 137 essential local government services to over 22 million people - 40% of the population - and cover 68% of the country by area. District councils have a proven track record of building better lives and stronger economies in the areas that they serve. Districts protect and enhance quality of life by safeguarding our environment, promoting public health and leisure, whilst creating attractive places to live, raise families and build a stronger economy. By tackling homelessness and promoting wellbeing, district councils ensure no one gets left behind by addressing the complex needs of today whilst attempting to prevent the social problems of tomorrow

The District Councils' Network welcome the opportunity to respond to the proposal of a specialist Housing Court as district councils play a key role in the provision of advice to both private landlords and tenants and are often vital in the prevention of court proceedings through the delivery of mediation before this course of action is required.

Response to consultation

District councils have experience of County Court proceedings in the use of both Section 8 and Section 21 of the Housing Act 1988 through the advice provided to private landlords wishing to take possession proceedings and for private tenants facing homelessness. However, in the role of landlord for housing stock authorities, district councils would use the legislative powers of the Housing Act 1985, which is not mentioned in this consultation. As it is unclear if the Housing Court would be used for social tenancies, which utilise different legislative powers to those set out in the consultation, we would like to take this opportunity to respond from the perspective of district councils' responsibilities to provide housing advice and statutory homelessness services to private tenants, and to provide advice to private landlords who intend on using the powers set out in the Housing Act 1988 seeking possession proceedings against their tenants.

The District Councils' Network welcomes improvements to the court process for gaining possession. However, evidence provided in the 2018 National Audit Office analysis¹ identifies that demand in homelessness services has significantly increased, therefore it is of the utmost importance that any changes in the timescales for possession are in line with the new HRA (2017) and the 56 day prevention duty.

¹ <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>

In both the Homelessness Reduction Act 2017 and the Government's consultation on *Overcoming the barriers to longer tenancies in the private rented sector*², there is a focus on private landlords playing an increasing role in meeting housing needs and in preventing and relieving homelessness, and the DCN strongly advocates their involvement in this preventative action. However landlords will be reluctant to let properties and support homelessness prevention work if they feel they are at risk of facing long and drawn out possession proceedings should they wish to repossess their property at a later date, therefore the proposal for a Housing Court could potentially send a positive message to landlords who may then be more prepared to work with local authorities and other agencies to offer tenancies to households who are vulnerable or on a low income, which is currently a main barrier to securing accommodation for those facing homelessness. A specialist Housing Court for this purpose should see greater confidence for private landlords which is to be welcomed but it must also provide better protection for tenants and encourage greater mediation and preventative opportunities before the need to begin possession proceedings.

The DCN request consideration that mediation between landlord and tenant be a requirement before applications for possession proceedings are accepted by the court in order to ensure every effort has been made for a mutual resolution. We would also ask that landlords are clearly directed to their district council in order to seek advice on negotiation, which will allow officers and private landlords to work together to provide much needed prevention services and provide holistic support to tenants in order to deliver long term resolution.

The current court process can be confusing for residents and can also have a significant financial impact, as court costs incurred by the landlord are likely to be passed on to the tenants, even when there is no fault awarded in the possession proceedings. As indicated in the Resident Landlords Association *The Impact of Taxation Reform on Private Landlords* report³ published in March 2018, of the private landlords who had attempted to remove a tenant, 62% reported that this was because of rent arrears. Consideration should be taken to ensure additional financial burdens are not unnecessarily placed on to those already struggling to make payment to stay in their current accommodation, and that a new system is not introduced which would see tenants in court sooner, without the opportunity for prevention and support in order to address the causes behind the need for private landlords to seek possession. As advisor and liaison to both tenants and private landlords in county court and tribunal processes, district councils' experience is that tenants are often burdened with the financial repercussions of proceedings taken against them, which as the cause is often due to unpaid rent, is counter intuitive in enabling them to source secure accommodation following eviction. As district councils often support residents in a cycle of homelessness, this system can be seen as a barrier to resolving cases of homelessness in the longer term.

In the cases of both the County Court and the High Court, district councils often provide advice to clients who do not understand the process or who are frightened by it and its

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721556/PRS_Longer_Tenancies_Consultation.pdf

³ <https://research.rla.org.uk/wp-content/uploads/impact-taxation-reform-landlords-2018.pdf>

implications. The High Court is particularly alarming for private tenants as it is a fast-track process where little or no notice can be given of immediate eviction. This has previously been used less often by private landlords because it is much more expensive for them to use but district councils have seen a gradual increase in its use as it results in more rapid eviction, the result of which sees an immediate demand on district council homelessness services. As there is no opportunity at this stage to mediate between tenant and private landlord, district councils are therefore put in a position where they can only provide a reactive resolution in seeking emergency or temporary accommodation. Prevention is a pivotal part in councils working to reduce the increasing rates of homelessness and so rapid evictions for residents who were unable to comprehend and/or navigate a confusing court system is extremely detrimental to achieving our duties in prevention.

The DCN welcomes a Housing Court to deal specifically with tenancy and property matters, with clearer procedures and less delays, as this is preferable to the uncertainty and lack of clarity in the current court system. In order to achieve a less arduous system it must be adequately resourced so that cases can be dealt with in a timely manner. It must also be stripped of unnecessary bureaucratic processes which can confuse or frighten the users of court services, which will enable clients to understand their rights and their options, which in turn will prevent unnecessary action being taken when opportunity for mediation has not been explored.

For the proposed Housing Court to operate effectively, it will need to be backed up by accessible advice and support services for landlords and tenants. Landlords need to be given clear guidance so that they know how to undertake possession actions in the correct legal manner, this is especially important for landlords with small portfolios who may have limited experience of taking possession action. Alongside this, tenants need to be able to access timely and early advice on their rights and housing options, ensuring that there is early intervention by the local housing authority to support the tenant in working to prevent or relieve their homelessness. To ensure this support is provided to both landlords and tenants, we reiterate the call for mandatory mediation through the local housing authority before a Housing Court could accept applications for possession proceedings. If this is not incorporated, it is essential that any new Housing Court system make provision that the local housing authority is notified as early as possible that possession action is being undertaken which will not only support the tenant in avoiding homelessness but will also support the landlord by potentially resolving a tenancy breach or allow proactive support to enable the tenant to move on rather than remaining in situ and requiring a Warrant for Possession.

The DCN calls for fairness in any proposed housing court for both tenant and landlord. Private landlords should have confidence that when they pursue a repossession claim in the correct manner, following mediation and the serving of the correct notices, that these claims will be dealt with swiftly and the landlord will be able to secure possession within a reasonable timescale. In turn, tenants need to have confidence that illegitimate and unlawful repossession claims will be swiftly dismissed and that they will not be subject to long periods of anxiety and uncertainty while disputed possession actions are being resolved.

At this stage there is little detail on the vision of this specialist court and so we ask that further consultation be completed when a more defined outline of the proposed system is ready to be shared. We would also ask that full consideration be made of previous consultation responses to the Social Housing Green Paper to ensure that any specialist housing court does not have a detrimental impact on the work to support longer tenancies. If social tenancies are to be included in the proposed Housing Court, the DCN call for a separate consultation be carried out regarding the legislative powers that district council's use which are set out in the Housing Act 1985, and not the Housing Act 1988 which is the only act referred to in the consultation. This additional consultation and review of the current system from the perspective of district councils as landlords is to be welcomed as the experience of using the County Court process for district councils is equally slow and cumbersome.